

Power Tools for Negotiating International Business Deals (2d Edition)

James M. Klotz

Wolters Kluwer, 2008

One of the most difficult books to write is what might be termed the mentor book. Someone already experienced in a particular practice area knows the basics, understands the terrain and has instincts for what the 'real' rules are (as opposed to the written ones), and how people act. Such a person looks to the detailed treatise, the plethora of footnotes or the sophisticated and nuanced analysis to help navigate a particular situation. On the other hand, the neophyte looks for the simplest outline, the checklist approach, an almost safety-net work that, while providing the basics also makes clear there are dangers ahead.

How, then, to write for both audiences and provide value added? James Klotz, a seasoned corporate attorney with Canada's Miller Thomson, has done that in this readable, informative and relatively concise volume. At its core, it is a prophylactic book: Its focus is primarily on identification of issues, with a liberal amount of practical suggestions and limited case law citation. As Klotz notes in his introduction, the book is *not* a substitute for "proper legal and tax advice," but rather is a tool to "understand[ing] the issues in enough detail to assess the risk of the transaction."

The book follows a logical order, beginning with the negotiation stage and protection of confidential information, drafting and use of letters of intent, and consideration of what most consider boilerplate provisions, such as dispute resolution and *force majeure*. However, as a good mentor should, the author taps the reader on the shoulder and says, "look again."

For example, the subject of introductory paragraphs or recitals is specifically addressed. Klotz notes the "tendency to gloss over recitals on the way to the meat of the agreement," but adds that "they may contain legally persuasive content that may be important in the interpretation of the agreement" and may even "recite facts that are not actually reflected in the agreement." American lawyers may cite law from a particular jurisdiction to indicate that recitals or "whereas" clauses do not create rights beyond those in the contract's operative terms, and therefore are of no legal moment. However, the impact not only of a choice of law provision may alter that result. More to the point, as Klotz points out, contract recitals may be particularly relevant where the United Nations Convention on Contracts for the International Sale of Goods is concerned, the intention of the parties becomes particularly relevant.

It is this kind of limited and focused discussion of the pieces of an international transaction, linked to the broader discussion, that makes the book particularly useful.

Following the first chapter's preliminary considerations, the book moves through negotiating the international sales of goods and services, with instructive explanation of Incoterms, import and export regulations, insurance, methods of payment, damages provisions and intellectual property issues, to name a few. Following this detailed overview, the book breaks down the discussion by type of agreement—agency and consulting deals, international dis-

tribution agreements (including more-detailed exposition on intellectual property issues), international licensing deals, and international joint venture and consortium deals. In each chapter, limited checklists and case examples are used to provide context.

This is not a treatise containing detailed forms or multitudes of footnotes to case citation and statutory reference. It is, however, the written equivalent of having the experienced partner down the hall, who in response to the query "Got a minute?" provides cogent response to the myriad of questions that may arise from beginning to end in the international business transaction.

Reviewed by Steven M. Richman

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